U.S. Senate Committee on
Banking, Housing, and Urban Affairs
U.S. Senator Richard C. Shelby, AL, Ranking Member

EMBARGOED UNTIL BEGINNING OF HEARING

Contact: Jonathan Graffeo at (202) 224-0894
Jonathan_Graffeo@banking.senate.gov

OPENING STATEMENT OF SENATOR RICHARD C. SHELBY

MARK UP: THE INDUSTRIAL BANK HOLDING COMPANY ACT OF 2008

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"Thank you, Mr. Chairman."

"In October of last year, this Committee held a single hearing to examine the regulation and supervision of industrial loan companies. I raised three questions at that hearing. First, to what extent, if any, should we allow the mixing of banking and commerce through commercial ownership of banks? Second, is a consolidated supervisory approach, rather than a more bank-centric approach, the optimal method for regulating our financial institutions? Third, should we charge the SEC with the additional responsibilities of a prudential supervisor?"

"At the time, I observed that it would require the full resources and attention of this Committee as well as the cooperation of the regulators to answer these questions. I specifically urged the Committee to hold additional hearings on these important issues. Unfortunately, it did not."

"As a result, we find ourselves in an unusual situation. While many of us share the underlying goal of the legislation – the elimination of the ILC loophole – we have serious differences on the best way to accomplish it."

"The bill before us today seeks to do two things. First, it attempts to close the so-called ILC loophole. Second, it creates a new regulatory structure for institutions that are not currently subject to holding company supervision. In so doing, it also recognizes in statute the SEC's consolidated supervised entity oversight regime as a valid holding company level supervisor for firms that own a depository institution."

"It is my strong belief that if we are to close the loophole, the best and most efficient way of doing so is to eliminate it where it resides – in the Bank Holding Company Act. In other words, call an ILC what it is – a bank. And, if it is a bank, it should not be exempted from the requirements of the Bank Holding Company Act. Any entity that wishes to own a bank would need to comply with the current regulatory structure."

"The Chairman's mark purports to prohibit commercial ownership of ILCs, but creates a broad carve-out for durable goods manufacturers. If the Committee has concluded that the commercial ownership of banks presents an unjustifiable risk to our financial system, certainly the ownership of banks by automobile manufacturers should be no exception. If the Committee has determined that it is a matter of competitive equity for American manufacturers to have ILCs, there is no record of it having done so. In fact, there is no record of the Committee having examined the issue of competitiveness at all. Losses for certain of these automobile manufacturers reached record levels of nearly $39 billion for last year alone. Those kind of staggering losses should give us pause before extending the federal deposit insurance safety net even further."

"The bill also embraces the consolidated supervisory approach to bank regulation long advocated by the Federal Reserve Board. But we have not reviewed the records of each of the bank regulators on this approach to determine which has been most successful. Nor have we determined whether the powers which this bill vests in the FDIC are analogous to those which the Fed and the OTS now wield with respect to bank holding companies and savings and loan holding companies, respectively. Instead, we are being asked to embrace the FDIC as the default holding company supervisor for the sake of having a holding company supervisor. This may very well be the correct course, but there is no record on which to base this judgment. About the only thing our hearing in October did establish is that the FDIC has done a satisfactory job of regulating ILCs using the bank-centric approach to date."

"Finally, the bill provides the SEC statutory authority as a consolidated supervisor of insured depository institutions. When we considered creating an investment bank holding company structure in Gramm-Leach-Bliley, we limited it to investment banks that were NOT affiliated with insured depository institutions, including ILCs. I believe we made that choice because we recognized the importance of protecting the taxpayer-backed deposit insurance fund. This bill not only ignores that important choice, it dismantles it without even so much as a hearing to discuss whether that is what we should be doing."

"The consolidated supervisory entities program serves the useful purpose of providing the SEC with the ability to consider the capital soundness of broker/dealers and investment banks. It was never designed or intended to involve oversight of insured depositories. At a minimum, if we are going to reject standing Federal law and are going to allow the program to be expanded to involve consolidated supervision of insured depository institutions, we need to look much more closely at it than we have. There has been ample evidence of the risks – sometimes extremely costly ones – that securities firms have taken in recent months. I would urge the Committee to conduct more oversight of this program before exposing a segment of taxpayer-backed deposit insurance to a regulator who has been previously rejected as a consolidated regulator of insured depositories."

"I want to be clear: I am not rejecting recognition of the CSE regime for its current purpose; rather, I am simply saying that we have not done our due diligence on whether it is an appropriate supervisor for depository institutions."

"Finally, I believe the bill also delves into areas of law which have never been discussed by this Committee in the context of ILCs. For example, the bill expands the reach of the Community Reinvestment Act in two ways. First, it subjects applications to acquire control of an ILC to the CRA and subjects savings and loan holding companies to the CRA before engaging in certain new activities under the Home Owners Loan Act. The bill also requires savings and loan holding companies to meet capital and management tests before engaging in such activities."

"Why are these provisions included? The October hearing record contains no mention of these issues and I am not aware of the Committee ever considering them."

"This committee has a long and proud record of working through complex and, at times, arcane issues. The strength of our efforts has been our ability to work together to reach consensus. Unfortunately, we have not been able to do so in this instance. Consequently, I will not be supporting the Chairman's bill."

"I do believe, however, that there is still an opportunity for us to come together. I will do everything I can to work toward that end because it is critical if we hope to craft a piece of legislation that can pass the Senate and become law. Mr. Chairman, you once said that 'failure to proceed on a bipartisan basis will, at best, waste the Senate's time in fruitless effort.' I couldn't agree more and I stand ready to continue to work with you in hopes of reaching a mutually-agreeable resolution."

"Thank you."